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ABSTRACT

The booklet provides a history of the legislative and court action in the area of special education. The National Defense Education Act of 1958 and the Secondary Education Act of 1965 are cited as two legislative milestones in education. Federal involvement in special education is discussed including the acts assisting the handicapped, gifted, and preschoolers. Numerous court cases are explored with emphasis on the historic Brown versus the Board of Education of Topeka and the decisions on due process rights. State legislative actions are also examined and the background of Public Law 94-142 is summarized. (PHR)

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NATIONAL INCENTIVES IN SPECIAL EDUCATION

A HISTORY OF LEGISLATIVE AND COURT ACTION

by

David P. Riley
Herbert D. Nash
J. L. Hunt

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DAVID P. RILEY has been Director of The Boston Project since the summer of 1976. The project, sponsored by the Massachusetts Department of Education, provides technical assistance to the Boston public schools in all areas of special education. Riley received his Ph.D. in Special Education Administration in 1975 from Syracuse University.

HERBERT D. NASH, who served as President of NASDSE in 1973-1974, is the Director of Special Education Programs, Division of Early Childhood and Special Education, Georgia Department of Education, a post he has held since 1969. He received his doctorate from the University of Georgia in 1978.

J. T. HUNT, Ph.D., has been a Professor of Special Education, University of Georgia, since 1968 and is presently Editor of *Education and Training of the Mentally Retarded.* He has been on the faculty of the University of Washington and University of Arizona, and served as Chairman of the Division of Exceptional Children at the University of Georgia from 1968-1976.

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PREFACE

Federal involvement in general and special education, together with the influences of court decisions and the pressures of special interest groups, has been significant in shaping national educational policy affecting education of the handicapped. This document reviews these historical developments.

The purpose of this publication is to present an overview of the organizational, legislative, and judical evolutions that led to the development and implementation of one of the most comprehensive pieces of federal education law—P.L. 94-142. The Education for All Handicapped Children Act of 1975. A basic tenet of NASDSE and the authors has been that education leaders at all levels—the policy levels, the administrative levels, and the classroom levels—can best understand and implement the law if made fully aware of its history. Although the history does not cover all factors contributing to change over the years such as findings on special classes and new service delivery models, or the media expose of the 1960s, NASDSE hopes the document expands the awareness of special education's past history and results in a greater understanding of its present and future directions.

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JAMES R. GALLOWAY
Executive Director

WILLIAM V. SCHIPPER
Associate Director

MICHAEL E. NORMAN
Associate Director

NASDSE, Inc.

National Incentives in Special Education
A History of Legislative and Court Action

An Historical Perspective

The organization and administration of education in the United States have been highly decentralized from the earliest Colonial days. The Constitution laid a firm groundwork for this continuing tradition in the Tenth Amendment, which leaves the power to provide for public education to the states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

This was interpreted by the judiciary in 1899 in *Cummings v. Richmond County Board of Education:*

> The education of the people in schools maintained by State taxation is a matter belonging to the respective states, and any interference on the part of Federal authority with the management of such schools cannot be justified except in a clear and unmistakable disregard of rights secured by the supreme law of the land.

The first recorded involvement of the federal government in the education process dates back to the Land Ordinance in 1785, which reserved one lot in every township in the Northwest Territory "for the maintenance of public schools." The Northwest Ordinance, passed by Congress two years later, declared that "schools and the means of education shall forever be encouraged." In the subsequent early years of the country, the land grant provisions of statehood acts encouraged the use of proceeds from public land sales for education. These acts made establishment and maintenance of schools a condition for statehood, thus further promoting a decentralized school system.

No subsequent congressional action was taken concerning education until 1862, when the Morrill Act created federally supported land-grant colleges. As with other federal legislation that tended to direct state educational activity toward national purposes, this Act was designed to foster military training and increase agricultural and industrial production essential for war or defense. A second Morrill Act in 1890 augmented the earlier federal assistance to land-grant colleges. In more recent years, the National Defense Education Act of 1958, described later, provided impetus for improving education as a matter of national policy after Russia's "Sputnik" launching raised criticism of American education.

The federal government's other educational activity during the 19th century was the establishment in 1867 of an Office of Education to gather and disseminate information on the organization and administration of education. From 1870 to 1929, this office was called the Bureau of Education and was under the jurisdiction of the Department of the Interior. It then moved to the Federal Security Agency where in 1933 it added the functions of the Federal Board for Vocational Education. Since

1953, it has been called the Office of Education and is a primary component of the Department of Health, Education, and Welfare (DHEW). The Office is headed by a Commissioner of Education, appointed by the President with the consent of the Senate, who serves under the Assistant Secretary for Education of DHEW.

Financial Aid for Education

Financing of American elementary and secondary education has been largely by state and local governments. Efforts starting in 1870 to fund schools aroused widespread public opposition and denouncement by educational groups as unwarranted federal intervention into public school education – a local and state prerogative. A major breakthrough came with initiatives to provide assistance to state programs for vocational education. The landmark Smith-Hughes Act of 1917 gave critical impetus to high school vocational education, profoundly affecting the direction of federal involvement in public education.

Numerous legislative proposals were presented in the ensuing decades but none were passed. In 1950, P.L. 874 represented the next plateau in federal legislative activity. The law, a response to the national defense crisis of the Korean War, provided funds for schools in areas impacted by federal activity, generally those near large military installations. The rationale for such aid was that local tax bases could not bear the costs incurred with enrollment of children of military persons, most of whom were transient. This act is still funded today.

Two Legislative Milestones

During most of the 1950s, congressional appropriations for education focused mainly on school construction. The next federal milestone in legislation and funding of schools was the National Defense Education Act of 1958 (NDEA). It provided for 12 programs, called Titles, affecting all levels of education, public and private, with increased grants and loans to higher education, training and operational funds for guidance and counseling, and funds to upgrade programs in science and mathematics. Precipitated by the Soviet breakthrough in space, as noted earlier, this law has been regarded as the government's most widespread attempt to direct education toward national objectives.

In President Kennedy's administration, he presented to Congress a bill for general assistance to public education in the states. Congress voted down general aid but did enact into law other bills providing federal funds for specific educational purposes, including some impacting upon the handicapped.

In 1965, Congress passed the Elementary and Secondary Education Act (ESEA, P.L. 89-10). The Act which also called its programs Titles, targeted funds for education of children from low-income families and for experimentation and innovation in education. Title I of the Act has become the largest single focus of federal aid to education programs, providing more than $4 billion and serving more than nine million disadvantaged children in its first six years of operation.

Called the watershed in the effort to secure permanent federal involvement in financial support of schools, ESEA brought the first noticeable levels of federal funding to most school districts. The Act was hailed as a major political feat, because for the first time previous legislative stumbling blocks involving issues of race, religion, and federal control had been overcome.

The next few years were generally disappointing to those seeking increased federal funds for education. The legislative intent of ESEA remained intact, but funds were

hardlined into categorical programs and compensatory education rather than to general education, and authorized levels of funds were not appropriated. Between 1969 and 1973, it is estimated that the Nixon administration forestalled or barred the spending of approximately $1 billion in education funds through impoundment. At the same time, doubts were being raised about the effectiveness of ESEA Title I compensatory education programs and Head Start.

Advocates Enlisted for Funding

Coalitions of special interest groups began to form to combat the cuts in education funds. In order to gain broadest possible support, these groups enlisted advocates for minority issues, such as education for the handicapped, on the premise that politicians could not speak against such concerns. This factor was to become extremely important in later expansions of special education legislation and appropriations.

The 94th Congress in 1975 added more than $6 billion to the FY 76 education budget and overrode President Ford's veto of the legislation. This indicated that Congress would maintain the federal budgetary commitment to the schools, continuing the funding process that had been growing for a decade. It was this same Congress, with many freshmen Senators and Representatives, that enacted P.L. 94-142, The Education for all Handicapped Children Act.

In summary, the federal role in education in recent years has been programmatic, allocating limited funds to bolster school operations but seeking to encourage skills and values deemed important to national well-being – such as vocational education or the NDEA Act. These programs appear to have left the established structure of "decentralized" schooling intact, and local school systems and state education agencies relatively autonomous.

Federal Involvement In Special Education

The first known federal legislation for handicapped persons was passed in 1827 and provided for completion of a deaf and dumb asylum in Kentucky. Since then, 67 measures have become law, including funds to create Gallaudet College in 1864, amendments to the Social Security Act for the deaf and blind, numerous acts providing services for the blind (such as the American Printing House in 1879), and other laws which established rehabilitation programs. Few of these programs had sufficient support for passage on their own, with many gaining approval as amendments attached to other bills.

It was not until 1954 that Congress again recognized the need for aid to education for handicapped children on a national level. The Cooperative Research Act, P.L. 83-531, provided for a program of grants for institutions of higher learning and state agencies for cooperative support of educational research, surveys, and demonstration, and for dissemination of information from educational research. When funded in 1957, the appropriation earmarked $675,000 for research related to education of the mentally retarded. Another evidence of Congressional concern was passage in 1958 of an act to provide a loan service of captioned films for the deaf in HEW.

The NDEA Act of 1958 has been called "landmark legislation" for special education, because it established a precedent for P.L. 85-926. Signed by President Eisenhower the same week as the NDEA Act, P.L. 85-926 was designed to encourage

expansion of teaching of mentally retarded children through grants to institutions of higher education and state education agencies. The trend for categorical aid for the handicapped was set in motion, and legislative support quickened from that point.

Handicapped Division Established in HEW

In 1961, P.L. 87-276 provided support for training classroom teachers of the deaf. Two years later, P.L. 88-164 added teachers of the hard-of-hearing, speech-impaired, visually-impaired, emotionally disturbed, crippled, and other health-impaired children. The same law created a Division of Handicapped Children and Youth in DHEW.

President Kennedy officially recognized the Division in signing the law and appointed Dr. Samuel A. Kirk to establish it. While the Office of Education had maintained an organizational unit of special education for many years, it was a one-person operation used primarily for information gathering and dissemination. Creation of the new Division represented the first advance toward visibility and influence for the cause of education for the handicapped within the federal bureaucracy.

P.L. 89-313, passed in 1965, amended Title I of the Elementary and Secondary Education Act (ESEA) and established grants to state agencies to assist handicapped children in state-operated or supported schools. The following year, an amendement to ESEA created the National Advisory Committee on Handicapped Children to advise the Commissioner of Education on matters related to the educational needs of handicapped children. The legislation also established the Bureau of Education for the Handicapped to administer all Office of Education programs designed for the handicapped.

A further amendment to ESEA, known as Title VI, was evidence of the advancement in federal involvement in education over 100 years. This Title provided funds to the states to expand programs and projects, either directly or through local education agencies, to meet the special educational and related needs of handicapped children.

The new Bureau prepared the 1967 legislative package for the handicapped. This package included: (1) the development of regional resource centers; (2) a program of recruitment and information; (3) expansion of the media program to include all handicapped children; (4) centers and services for deaf/blind children; (5) program set-asides for the handicapped under Title III of ESEA; (6) increased P.L. 89-313 (institution) funds; (7) research and demonstration funds; and (8) changes in and increased funding of Title VI grants.

Congress was in the final week of its session, and it appeared it would adjourn before enactment of the program. Educators in the country protested and on December 15, 1967, Congress passed the package and President Johnson signed into law the 1967 ESEA amendments known as P.L. 90-247.

Acts Aid Preschoolers, Gifted

In 1963, the Handicapped Children's Early Education Assistance Act became law, establishing experimental preschool and early education programs for the handicapped that would serve as models for state and local education agencies. ESEA was amended again in 1969 with the Gifted and Talented Education Assistance Act. Although no funds were earmarked, state departments of education were authorized to provide technical assistance for programs for the gifted and talented and to provide fellowships for teachers of these children. The Act also provided for a program funding educational and research services for millions of formerly ineligible and unserved

children – those with specific learning disabilities.

During the early 1970s, Congress paid increased attention to the handicapped. Right-to-education lawsuits had emerged, as noted later. The Bureau provided program visibility, and special interest groups such as the Council for Exceptional Children aroused national and Congressional concern.

In 1972, Congress extended the Vocational Rehabilitation Act and, for the first time, directed state rehabilitation agencies to give priority to "individuals with the most severe handicaps." President Nixon vetoed both that law and a similar law passed in 1973. Finally legislation passed the next year retaining the key features and was signed into law, becoming P.L. 93-112.

Congress approved a tremendous increase in authorization levels for ESEA Title VI-B aid to states in 1974. P.L. 93-380, the Education Amendments of 1974, enlarged the authorized funding level for education of the handicapped from $100 million to $600 million. The 1974 amendments:

- legislated the right to education for handicapped children, incorporating recognition of guarantees being awarded in another arena, the courts;
- charged each state with establishing a goal of providing full educational opportunities for all handicapped children;
- required states to develop comprehensive plans with objectives for carrying out the goal;
- established provisions for:
  a. statewide "child find" programs to identify, locate and evaluate all children in need of special education services;
  b. due process safeguards for handicapped children and their parents in matters relating to identification, referral and placement;
  c. assurances of confidentiality of records.

Then on November 28, 1975, President Ford signed into law a measure that incorporated and expanded on these provisions of P.L. 93-380 – The Education of All Handicapped Children Act, P.L. 94-142. The intent of this Act was to provide a free and appropriate public education for all handicapped children between the ages of 3 and 21 by 1980.

Judicial Involvement In The Education Process

These provisions in law establishing the right to an education for all handicapped children also had a history made in the courts. The morality of providing for the interests and needs of children generally has been compromised by other interests of society. The principal agents providing for any "rights" of children have been parents or the state in its role as *parens patriae*. Government agencies organized to appeal on behalf of children often have found themselves in conflict between what might be right for children and their own institutional goals. The result has been, until recently at least, a lack of general and genuine concern for the particular needs and interests of children in society.

Webster defines "right" as being "anything, as a power, condition of existence, or possession to which one is entitled by nature, legal or moral law." Distinctions as to what "one is entitled (to) by nature, legal or moral law" are critical. History has demonstrated quite clearly that claims of natural or moral right are virtually

meaningless. Until such claims are recognized legally, and are thus enforceable and enforced, rights by some moral or natural code are easily and often ignored.

Children for centuries have had "rights" recognized by law. Blackstone (1794) in his Commentaries on the Laws of England, characterized these "rights."

> The duty of parents to provide for the maintenance of children is a principle of natural law . . .By begetting them therefore, they have entered into a voluntary obligation, to endeavor, as far as in them lies, that the life which they have bestowed shall be supported and preserved. And thus the children will have a perfect *right* of receiving maintenance . . . protection . . . (and) an *education* suitable to their station in life.

The rights Blackstone describes, however, are matters of "natural law," not legally enforceable law. Rights to "protection" and "education" are emphasized more as the morally lawful duties of parents than as rights of children. Children depend upon the good will of an adult world to secure fulfillment of their own needs. Rights of access to the opportunities in education often have been and continue to be determined capriciously.

Brown Proclaims Education as Legal Right

In 1954, the United States Supreme Court handed down a major decision in *Brown v. Board of Education of Topeka, Kansas,* a case based on discriminatory practices of the Topeka School System against black children. Most significant in the unanimous decision was the following quotation which, for the first time in our society, proclaimed education to be a legal right of all children:

> Today education is perhaps the most important function of state and local government . . . it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust professionally to his environment. In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all children.

This same language and rationale were used in a ruling in 1969 by a judge of the Third Judicial District Court of Utah, requiring that two mentally retarded children be provided an education.

The legal right to education for handicapped children was firmly established in 1971 when the State of Pennsylvania entered into a court-approved consent agreement with plaintiffs in the case of *The Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania,* in which 13 mentally retarded children were represented in a "class action" suit. The court order provided that the state could not apply any law which would postpone, terminate, or deny mentally retarded children access to a publicly supported education, including a public school program.

As the Pennsylvania School Code was written, children between the ages of 6 and 20 years were eligible for a free public school education. The plaintiffs represented children who had been excluded from school, "excused" from attendance at public school, had their admission to public school postponed, or otherwise had been refused free access to public school education because they were retarded.

Provisions of PARC Order

A June 1971 stipulation and order and an October 1971 injunction, consent agreement, and order resolved the suit in favor of the parents and children. Provisions of the agreement prevented the following:

- Denying any mentally retarded child access to free public programs of education and training;
- Postponing or in any way denying the mentally retarded child free access to the public program of education and training;
- Charging tuition or maintenance fees for a mentally retarded child on a basis other than that applied to other children;
- Denying homebound instruction to the mentally retarded child merely because no physical disability accompanies the retardation or because retardation is not a short-term disability.

Among other important considerations, the court also ordered that the children of the plaintiffs were to be reevaluated immediately and placed in programs and that, by September 1972, all retarded children in the state between the ages of 6 and 21 were to be provided a free and publicly supported education.

In *Mills v. Board of Education of District of Columbia (1972)* parents and guardians of seven handicapped children brought a class action suit against the District of Columbia Board of Education and petitioned that, despite moral and legal obligation, the District had excluded handicapped children from educational opportunity. The court issued a stipulated agreement and order that declared the constitutional right of all children, regardless of any exceptional condition or handicap, to a publicly supported education. It was further declared that defendant's rules, policies, and practices which excluded children, without a provision for adequate and immediate alternative educational services and the absence of prior hearing and review of placement procedures, denied the plaintiffs and the class the right of due process and equal protection of the law.

In the words of the *Mills* trial judge,

> If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system, then available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education . . . The inadequacies of the . . . public school system, whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the "exceptional" or handicapped child than on a normal child.

Thus, if a state provides for a tax-supported school system, the laws and regulations governing that system must neither infringe on the rights of individuals granted by those portions of the Bill of Rights made applicable to the states, nor deny any person equality under those laws or regulations. Timing and substance of the *PARC* and *Mills* decisions had great impact on the final version of P.L. 94-142 and provided for a great increase in federal dollar support.

The issue of guaranteeing these children an education appropriate to their needs derived from the position of expert witnesses in both cases, that placing a handicapped child in an appropriate educational program was akin to excluding the child from an education altogether. The court orders in both the *PARC* and *Mills* cases made this point when they referred to an "appropriate" *(PARC)* or "suitable" *(Mills)* education for plaintiff children. In order to assure such "appropriate" educational programs,

both courts set out specific due process procedures under which handicapped children were to be identified, assessed, and placed or not placed in a regular or special education program. These provisions are now in P.L. 94-142.

Background to Due Process Rights

The first application of the constitutional guarantee of due process to children had occurred earlier, in *In Re Gault* (1967), where due process safeguards previously reserved for adult criminal defendants were extended to juveniles in criminal hearings. *Madera v. Board of Education of the City of New York* (1967), though later overturned by a higher court, expanded the *In Re Gault* principle in a case which involved the suspension of a child from school.

The argument in *PARC* for due process rights in instances of placement of a child in any "nonregular" education program followed a judgment granted in the 1971 case of *Wisconsin v. Constantineau.* This case dealt with a Wisconsin statute which allowed for the public posting of names of alleged problem drinkers. Without prior notice, Grace Norma Constantineau's name was posted in public places identifying her as a citizen found to be publicly drunk too often. Mrs. Constantineau filed suit, claiming this action resulted in the labeling of people in a degrading way and, therefore, warranted procedural due process which required advance notification and an opportunity for the person to be heard before being labeled.

The Wisconsin court and the U.S. Supreme Court agreed. In doing so, the Supreme Court said some things that were particularly germane to the due process issue as raised in the *PARC* case. The Court said:

> The only issue present here is whether the label or characterization given a person by "posting," though a mark of illness to some, is to others such a stigma or badge of disgrace that procedural due process requires notice and the opportunity to be heard. We agree with the Court below that the private interest is such that those requirements must be met. Only when the whole proceedings leading to the pinning of an unsavory label on a person are aired can oppressive results be prevented.

Lawyers for the plaintiffs in *PARC* argued that the label of "mentally retarded" was stigmatizing, and due process rights were warranted. The Pennsylvania Court concurred and required, among other things, the following:

- Parents to be given notice and the opportunity to be heard before their child's educational assignment can be changed, whether from regular class to special class or any other programmatic change in their child's education status;
- Every two years, and every year if the parents so request, the child and parents to be given notice and the opportunity to be heard regarding the appropriateness of present placement;
- The notice, in addition to notifying parents of their right to be heard, to inform parents of the availability of the closest chapter of the Pennsylvania Association for Retarded Children which would assist them in the hearing; inform them of the availability of the mental retardation diagnostic facilities of other departments of the government to assist parents in the hearing and in independent prescription;
- The hearing to be chaired by the State's Secretary of Education or his designee;
- The parents to be granted access to all the child's school records;
- The parents to be entitled to an independent evaluation;
- The parents to be entitled to representation at any hearing before the Secretary by any person of their choosing;

- At that hearing, the parents to be entitled to present whatever evidence they may wish with regard to the educational placement of their child; to examine, question, cross-examine any officials of the school district;
- The hearing officer to enter a decision, the sole criterion being: Is this the appropriate program for this child? If not, what is?

The *Mills* case, too, demanded that procedural safeguards, required by the constitutional provisions of the Fourteenth Amendment, must be offered during the special education placement process. Where *PARC* dealt specifically with the mentally retarded, *Mills* expanded this concept to all "children who are . . . thought . . . to be in need of a program of special education."

One other case is significant with regard to present requirements of P.L. 94-142. The Alabama case of *Wyatt v. Stickney* (1972) determined that persons civilly confined to public institutions could claim an "inviolable right to habilitation." The court defined habilitation to include "programs of formal, structured education and treatment." Freeing the definition of education from its traditional concept, the court held that education was "the process of formal training and instruction to facilitate the intellectual and emotional development of residents." Thus, the case established the right to treatment as well as the responsibility of states to educate all children in or out of public schools.

State Legislative Action

In a 1975 report, the Education Commission of the States listed 21 states involved in civil actions concerning the right of school-age children with handicapping conditions to an education. An additional six states were involved with "Right to Treatment" litigation, and at least six additional "Due Process and Placement" cases were in process or completed at that time. State legislation relating to education of handicapped children has increased widely in the past decade. In 1971 alone, 899 bills addressing this need were introduced in state legislatures and 237 were enacted into law.

At least 46 states had some form of mandatory special education legislation by 1975. Many states had initiated comprehensive mandatory legislation earlier, before court decisions; for example, Connecticut in 1966 and Georgia and Florida in 1968 had moved steadily toward full and comprehensive services as a result of their state legislative mandates.

States such as Tennessee, Arkansas, Vermont, Indiana, Wisconsin, Maine, Massachusetts, and Alabama enacted major legislation concerning the education of handicapped children more recently. Many of these laws totally revamped the educational structure as it pertained to serving the handicapped. In Massachusetts, for example, Chapter 766 of the General Laws was passed without debate and without rollcall vote in 1972 and was implemented in September 1974. Some of the important elements of the law are:

- Responsibility to provide services lies squarely with the local school boards;
- Eleven program alternatives are outlined as being offered to a handicapped child as his/her needs dictate;
- Strict due process procedure is outlined whereby parents have important involvement in determination of educational programming for their children;
- Each child is evaluated individually and offered a program best suited to his/her needs, and programs are periodically reviewed to see if they are really benefitting the children in those programs;

• The state provides reimbursement to local school districts at an amount of 100% for the cost of special education programs in excess of average per-pupil expenditures, but not more than 110% of the average state expenditure for each special education pupil.

The law was designed to help Massachusetts develop humane programs for children with special needs in or near their homes, instead of relying on private and public residential institutions.

Tennessee's Chapter 839, passed in 1972, adopted the major provisions of the Model Compulsory School Attendance Law of the Council for Exceptional Children. Sections 1 and 2B reflect concern for the right to education as well as the idea of providing education for the handicapped in as close to a "normal" setting as possible.

> SECTION 1. It is the policy of this state to provide, and to require school districts to provide, as an integral part of free school education, special education services sufficient to meet the needs and maximize the capabilities of handicapped children. The timely implementation of this policy to the end that all handicapped children actually receive the special education services necessary to their proper development is declared to be an integral part of the policy of this state. This section applies to all handicapped children regardless of the schools, institutions or programs by which such children are served.
>
> SECTION 2B. To the maximum extent practicable, handicapped children shall be educated along with children who do not have handicaps and shall attend regular classes. Impediments to learning and to the normal functioning of handicapped children in the regular school environment shall be overcome by the provision of special aids and services rather than by separate schooling for the handicapped. Special classes, separate schooling or other removal of handicapped children from the regular educational environment shall occur only when, and to the extent that, the nature or severity of the handicap is such that education in regular classes, even with the use of supplementary aids and services, cannot be accomplished satisfactorily.

This law also provided many of the same due process protections as ordered in the *PARC* and *Mills* cases.

Several lawsuits in California related to the placement of black and Spanish-speaking children in special classes; e.g., *Diana v. State Board of Education, 1970; Arreola v. Board of Education, Santa Ana School District, 1968; Covarrubias v. San Diego Unified School District, 1971.* These cases resulted in amendments to that state's statutes and regulations. These statutory changes further expanded placement safeguards:

• Require individual intelligence testing in the primary language of the child's home prior to admission to a special education program for the mentally retarded;

• Prohibit placement of children in special education classes for the mentally retarded if they score higher than two standard deviations below the norm on a specified individual intelligence test;

• Prohibit placement of children in special classes for the mentally retarded without parents' written consent obtained after a complete examination of the special education program;

• Require the Department to submit an annual report to the Legislature on the testing and placement of children.

The cases also had an impact at the federal level. In 1970, DHEW's Office of Civil Rights sent a memorandum to 1,000 school districts with large numbers of bilingual children. The memo warned that schools would not be in compliance with Title VI of the Civil Rights Act if students whose primary language was other than English were assigned to classes for the mentally retarded on the basis of tests that did not take into account their linguistic proficiency.

Background To P.L. 94-142

Armed with judicial intervention and state-level legislative initiatives, public pressure then combined with continuous testimony about the high percentage of children who were unserved – all culminating in development of P.L. 94-142.

There seems to be no doubt that constituents and organized groups, including consumer and parent lobbying efforts, have had meaningful and significant influence on the evolution of federal and state legislation. The terms "pressure groups," "lobbies," and "special interest groups" are defined as any organized effort to influence governmental decision making. The activity of such groups centers generally on the legislative branch of government or the office of the executive: mayor, governor or president. However, the courts and government agencies often become a focal point of lobbying efforts. In our system of judicial review, the courts hold significant power and are a part of the political process and thus are a focus for claims of interest groups. Agencies of government also wield much power in their capacity of generating, implementing and monitoring regulations complementing laws.

The role of the special interest group in the legislative process has been described as central to the full representation of the needs and interests of a disparate citizenry before government. The legislative process was created to protect against "one group" controlling the resources of society. Law is the result of compromises and coalitions among competing interests.

Organizations contributing to passage of P.L. 94-142, through their testimony before Congress, included the National Association for Retarded Citizens, Council for Exceptional Children, and National Association of State Directors of Special Education.

Debate on Proposed Legislation

Early in 1974, the Congress heard debate on then-designated House Resolution 7217 and Senate Bill 6 to increase federal support for the education of the handicapped and ensure their rights. Testimony before Congress stated that:

- There were more than eight million handicapped children in the United States and less than half were being served, thereby denying them equality of educational opportunity;
- More than one million handicapped children in the United States were excluded entirely from the public schools, prohibiting their inclusion in the educational process and forcing peer isolation;
- Many handicapped children throughout the United States participating in regular school programs had handicaps that were undetected;
- Because of the lack of adequate services within public school systems, families were frequently forced to find services outside these systems, often at great distance

from their residences and at their own expense;

- There were untold violations of the rights of children and parents to be involved in placement, confidentiality of records, procedural safeguards, and guarantees of adequate programs;
- There was a tremendous gap between manpower needs for severe and low-incidence handicapping conditions and numbers of children receiving service.

Two major themes emerged from the long series of hearings: first, the central concept of "right," and second, a need to increase federal financial support. The hearings led to Congressional approval of an omnibus legislative measure – the Education for All Handicapped Children Act of 1975, P.L. 94-142, which passed by votes of 404 to 7 in the House and 87 to 7 in the Senate. The law incorporates the major guarantees, procedures, and processes of legislative and judicial determination regarding education of the handicapped.

Summary

The developmental history of federal legislation and subsequent aid to education provides a background for understanding the steps leading up to passage and implementation of P.L. 94-142. An interesting factor that seems to thread its way through the history is that past legislation, both proposed and passed, has tended to serve as a model for new legislation. The spin-off effect can be traced in vocational education, starting with the Smith-Hughes Act of 1917 and moving along through amendments up to 1974. This has also been a factor with special education legislation.

It is difficult to determine whether the judicial process forces or interprets legislation. Many recent decisions, such as *PARC* and *Mills*, have influenced subsequent legislation and have established a new consciousness in providing programs and services for the handicapped.

What is also evident is that special interest groups and coalitions have had great influence in creating new concepts in the Act. A major movement has emerged which has affected the legislative, judicial, and executive branches of the government. The movement favors the minority, in this case the handicapped, and suggests that resources and benefits will be equitable for all. Now the movement is shifting its emphasis to administration and enforcement of these concepts. Only time will determine the effects of this movement at the grassroots level.

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